

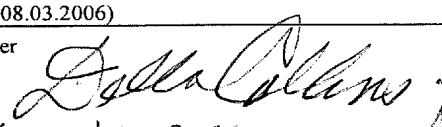
PATENT COOPERATION TREATY

PCT

INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

(Chapter II of the Patent Cooperation Treaty)

(PCT Article 36 and Rule 70)

Applicant's or agent's file reference	FOR FURTHER ACTION		See Form PCT/IPEA/416
International application No. PCT/US05/09650	International filing date (day/month/year) 23 March 2005 (23.03.2005)	Priority date (day/month/year) 24 March 2004 (24.03.2004)	
International Patent Classification (IPC) or national classification and IPC IPC: A61K 9/08 (2006.01), 9/10 (2006.01) USPC: 424/78.03,78.07,78.08,407,484,486,487			
Applicant ROBERT D. KROSS			
1. This report is the international preliminary examination report, established by this International Preliminary Examining Authority under Article 35 and transmitted to the applicant according to Article 36. 2. This REPORT consists of a total of <u>3</u> sheets, including this cover sheet. 3. This report is also accompanied by ANNEXES, comprising: a. <input type="checkbox"/> (sent to the applicant and to the International Bureau) a total of ___ sheets, as follows: <input type="checkbox"/> sheets of the description, claims and/or drawings which have been amended and are the basis of this report and/or sheets containing rectifications authorized by this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions). <input type="checkbox"/> sheets which supersede earlier sheets, but which this Authority considers contain an amendment that goes beyond the disclosure in the international application as filed, as indicated in item 4 of Box No. I and the Supplemental Box. b. <input type="checkbox"/> (sent to the International Bureau only) a total of (indicate type and number of electronic carrier(s)) _____, containing a sequence listing and/or tables related thereto, in electronic form only, as indicated in the Supplemental Box Relating to Sequence Listing (see Section 802 of the Administrative Instructions).			
4. This report contains indications relating to the following items: <div style="display: flex; justify-content: space-between;"> <div style="width: 15%;"> <input checked="" type="checkbox"/> Box No. I <input type="checkbox"/> Box No. II <input type="checkbox"/> Box No. III <input type="checkbox"/> Box No. IV <input checked="" type="checkbox"/> Box No. V <input type="checkbox"/> Box No. VI <input type="checkbox"/> Box No. VII <input type="checkbox"/> Box No. VIII </div> <div style="width: 85%;"> Basis of the report Priority Non-establishment of opinion with regard to novelty, inventive step and industrial applicability Lack of unity of invention Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement Certain documents cited Certain defects in the international application Certain observations on the international application </div> </div>			
Date of submission of the demand 07 October 2005 (07.10.2005)		Date of completion of this report 08 March 2006 (08.03.2006)	
Name and mailing address of the IPEA/ US Mail Stop PCT, Attn: IPEA/US Commissioner for Patents P.O. Box 1450 Alexandria, Virginia 22313-1450 Facsimile No. (571) 273-3201		Authorized officer Pili A. Hawes  Telephone No. (571) 272-1600	

INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

International application No.

PCT/US05/09650

Box No. I Basis of the report1. With regard to the **language**, this report is based on:

- ☒ the international application in the language in which it was filed.
- ☐ a translation of the international application into English, which is the language of a translation furnished for the purposes of:
- ☐ international search (under Rules 12.3 and 23.1(b))
- ☐ publication of the international application (under Rule 12.4(a))
- ☐ international preliminary examination (under Rules 55.2(a) and/or 55.3(a))

2. With regard to the **elements** of the international application, this report is based on *(replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report)*:

- ☒ the international application as originally filed/furnished
- ☒ the description:
pages 1-12 as originally filed/furnished
pages* NONE received by this Authority on _____
pages* NONE received by this Authority on _____
- ☒ the claims:
pages 13-16 as originally filed/furnished
pages* NONE as amended (together with any statement) under Article 19
pages* NONE received by this Authority on _____
pages* NONE received by this Authority on _____
- ☐ the drawings:
pages NONE as originally filed/furnished
pages* NONE received by this Authority on _____
pages* NONE received by this Authority on _____
- ☐ a sequence listing and/or any related table(s) - see Supplemental Box Relating to Sequence Listing.

3. ☐ The amendments have resulted in the cancellation of:

- ☐ the description, pages _____
- ☐ the claims, Nos. _____
- ☐ the drawings, sheets/figs _____
- ☐ the sequence listing (*specify*): _____
- ☐ any table(s) related to the sequence listing (*specify*): _____

4. ☐ This report has been established as if (some of) the amendments annexed to this report and listed below had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).

- ☐ the description, pages _____
- ☐ the claims, Nos. _____
- ☐ the drawings, sheets/figs _____
- ☐ the sequence listing (*specify*): _____
- ☐ any table(s) related to the sequence listing (*specify*): _____

* If item 4 applies, some or all of those sheets may be marked "superseded."

INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

International application No.
PCT/US05/09650**Box No. V Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement**

1. Statement

Novelty (N)	Claims <u>1-20</u>	YES
	Claims <u>NONE</u>	NO
Inventive Step (IS)	Claims <u>1, 4-20</u>	YES
	Claims <u>2 and 3</u>	NO
Industrial Applicability (IA)	Claims <u>1-20</u>	YES
	Claims <u>NONE</u>	NO

2. Citations and Explanations (Rule 70.7)

Claims 2 and 3 are directed to polyacrylate-18 and polyacrylate-19 which were not enabled in the priority application. The priority application further only supplies support for a polymer system wherein the system comprises a polymer solids content of from about 20% to about 30% by weight.

Claims 2 and 3 lack an inventive step under PCT Article 33(3) as being obvious over McNamara US 2004/0126345 A1. The reference shows a composition comprised of film forming polymers. The intended use is not a determining factor in distinguishing compositions. It is well known to use film formers as a topical protectant in mammals. A particular film former is Syntran EX-100 that is identical to applicants' disclosure in example 1. See [0030]. To use the polymer film former of McNamara alone on the skin of a mammal would have been obvious because one skilled in the art would recognize the need to protect sensitive areas of mammals frequently exposed to elements of the environment.

Claims 1-20 meet the criteria set out in PCT Article 33(4), and thus have industrial applicability because the subject matter claimed can be made or used in industry.

----- NEW CITATIONS -----